UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/537,877	06/07/2005	Gillian Antoinette Mimnagh-Kelleher	NL021259US	8406

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EXAMINER
SHAH, SAMIR M

ART UNIT	PAPER NUMBER
2856	

MAIL DATE	DELIVERY MODE
12/11/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

PTOL-90A (Rev. 04/07)

	Application No.	Applicant(s)
Advisory Action **Before the Filing of an Appeal Brief**	10/537,877	MIMNAGH-KELLEHER ET AL.
	Examiner Samir M. Shah	**Art Unit** 2856	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>05 November 2007</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

    a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.

    b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

    Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

    (a)☐ They raise new issues that would require further consideration and/or search (see NOTE below);

    (b)☐ They raise the issue of new matter (see NOTE below);

    (c)☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

    (d)☐ They present additional claims without canceling a corresponding number of finally rejected claims.

    NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

    The status of the claim(s) is (or will be) as follows:

    Claim(s) allowed: _____.

    Claim(s) objected to: _____.

    Claim(s) rejected: <u>26-35</u>.

    Claim(s) withdrawn from consideration: _____.

<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

<u>REQUEST FOR RECONSIDERATION/OTHER</u>

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>See Continuation Sheet.</u>

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.

13. ☐ Other: _____.

Samir M. Shah

U.S. Patent and Trademark Office

PTOL-303 (Rev. 08-06)   Advisory Action Before the Filing of an Appeal Brief   Part of Paper No.20071120
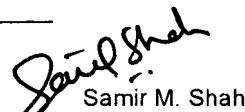
Continuation of 11. does NOT place the application in condition for allowance because: Applicants' arguments are not found persuasive. Applicants presented similar arguments in their response, to a Non-Final Office Action, filed on 08/06/2007, which were responded to by the Examiner in the Final Office Action mailed on 09/25/2007.

As to Applicants' arguments, the Examiner, as stated in the previous Office Action mailed on 09/25/2007, notes the following:

(a)   Note that Nikolic discloses, in step 305, "the output of the accelerometer or activity monitor is obtained...the acceleration output information...includes acceleration information from two orthogonal axes" (column 7, lines 15-21). Further, Nikolic discloses, in step 310, "the acceleration output or data for each axis is added to a cumulative sum for the corresponding axis...[t]he acceleration data is compared to the minimum and maximum values of the information obtained in step 305...this can be done by employing a look-up table...and taking the magnitude of the resultant values" (column 7, lines 22-30).

Thus, since the acceleration data consists of acceleration information from two orthogonal axes, it is clearly in the form of vectors. Moreover, for employing a look-up table and taking a magnitude of the resultant values, the magnitudes corresponding to associated vector components (acceleration information from the two orthogonal axes) has to be stored in the look-up table.

(b)   Also note that currently, claims 26 and 31 recite process/processing "the sensor signals as vector components of a vector to produce a magnitude of the vector using a lookup table of stored magnitudes and associated vector components", wherein the lookup table can comprise of any stored magnitudes and associated vector components, not necessarily the vector components related to the sensor signals. It is suggested that, in order to overcome the prior art of record, claims 26 and 31 be amended to include process/processing "the sensor signals as vector components of a vector to produce a magnitude of the vector using a lookup table, wherein magnitudes corresponding to said vector components are stored in the lookup table".

(c)   Further, note that look-up tables are well-known as an efficient means of determining/calculating vector magnitudes quickly and thereby eliminating the need for performing extensive/repetitive calculations, which in turn, helps save energy/power. For example, Van Wechel (US Patent 6,452,961 B1) discloses, "methods of computing or approximating the magnitude of a vector include the use of lookup tables" (column 23, lines 6-8). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include such a look-up table with stored magnitudes and associated vector components in the activity monitoring apparatus of Hutchings et al. (US Patent 6,122,960) or Jacobsen et al. (US Patent 6,160,478) to save energy/power.
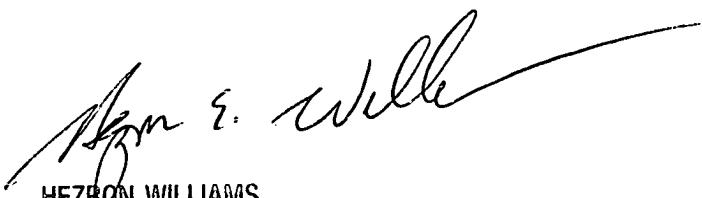
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